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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Equal Access and Interconnection ) CC Docket No. 94-54  
Obligations Pertaining to ) RM-8012  
Commercial Mobile Radio Services )

COMMENTS OF GTE SERVICE CORPORATION

GTE SERVICE CORPORATION  
ON BEHALF OF ITS TELEPHONE  
AND PERSONAL COMMUNICATIONS  
COMPANIES

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## TABLE OF CONTENTS

	<u>Page</u>
Summary . . . . .	v
I. Introduction . . . . .	1
<b>EQUAL ACCESS</b>	
II. The NPRM/NOI's Tentative Conclusion To Impose Equal Access Is Based on an Antiquated and Inadequate Record . . . . .	2
A. The MCI Petition Comments Are Out- Dated and Fail to Fully Account for Significant New Competitors. . . . .	2
B. The MCI Petition and CMRS Proceeding Comments Are Not a Substitute for the Requisite Commission Finding Concerning Lack of Competition in Cellular Markets . . . . .	4
III. Equal Access Need Not Be Imposed On Cellular Carriers Due to the Existence of Viable, Cost-Effective, and Technically Feasible Alternatives. . . . .	6
A. A Customer's Choice of IXC Can Currently Be Accessed with 800 and 950 Numbers. . . . .	7
B. 10XXX Is a Viable, Cost-Effective Method of Providing Customers With the Ability to Select Their IXC. . . . .	8
IV. The Imposition of Equal Access on Cellular Carriers Will Seriously Disrupt the Industry and Adversely Affect Cellular Subscribers. . . . .	9
A. Equal Access Will Cause Serious Disruptions to Cellular Service if Toll-Free Calling Areas Are Eliminated or Their Growth Retarded . . . . .	10

B.	If Wide-Area Toll-Free Calling Were to Be Reduced or Eradicated, There Would Be a Concomitant Loss in Savings to the Consumer . . . . .	11
V.	The Perceived Benefits of Equal Access Cannot Be Completely Realized Because the Full Imposition of 1+ Equal Access Is Technically Infeasible . . . . .	13
VI.	The Benefits of Implementing Equal Access Are Far Outweighed by the Costs. . . . .	15
A.	The Benefits of Equal Access Are Illusory or Can Be Realized Without the Imposition of Equal Access . . . . .	15
B.	Due to the Cost of Equal Access Conversion, Any Potential Decrease in Long Distance Prices Would Be More than Offset by Increases in Cellular Prices . . . . .	17
VII.	The Original Rationale for Equal Access Is Inapplicable in the Cellular and CMRS Context. . . . .	19
A.	The Judicial Origin of Equal Access . . . . .	19
B.	The Extension of Equal Access to the GTE Telephone Operating Companies . . . . .	20
C.	Cellular Facilities Are Not Bottleneck Facilities, and There Has Been No Determination That Cellular Carriers Possess Market Power. . . . .	22
D.	With the Introduction of Wide-Area SMR and PCS, Competition Will Continue to Increase, Making Equal Access All the More Unnecessary in the Future. . . . .	27
VIII.	Equal Access Should Not Be Imposed on Air-to-Ground Providers . . . . .	29
A.	Equal Access Is Unnecessary Due to the Vibrant Competition in the ATG Marketplace and ATG End Users' Ability to Select IXCs. . . . .	30

B.	Equal Access Is Technically and Economically Infeasible for Air-To-Ground Carriers. . . . .	31
C.	Equal Access Would Eviscerate an FCC Policy Largely Responsible for the Rapid Technological Innovation Which Is the Cornerstone of ATG . . . . .	34
D.	In the ATG Environment, 10XXX Codes Are Not a Viable Alternative to Equal Access . . . . .	35

## INTERCONNECTION

IX.	There Is No Reason to Depart From the FCC-Endorsed Policy of Negotiated Interconnection Arrangements . . . . .	37
A.	Contractual Negotiation of Interconnection Is Superior to Tariffed Interconnection . . . . .	38
B.	A "Most Favored Terms" Guarantee Is Unnecessary for Interconnection Contracts Between LECs and CMRS Carriers . . . . .	44
C.	Interconnection Agreements between LECs and CMRS Carriers Need Not Be Filed with the Commission . . . . .	45
X.	Market Forces, Rather Than Regulation, Should Determine Interconnection Among CMRS Providers, and CMRS ReSellers Should Not Be Allowed to Connect Directly to a CMRS Switch . . . . .	46
A.	CMRS Carriers Should Not Be Required to Interconnect with Other CMRS Providers . . . . .	46
B.	CMRS Resellers Should Not be Permitted to Connect Directly to the Switches of CMRS Licensees. . . . .	46
XI.	All CMRS Providers Except ATG Providers Should Be Subject to the Same Obligation to Provide Resale of Service. . . . .	47

A.	The Commission's Long-Standing Policy of Prohibiting Resale Restrictions Should Be Applied Equally to All CMRS Providers Except ATG Carriers. . . . .	48
B.	Resale Should Not Be Required of ATG Providers . . . . .	49
XII.	Conclusion . . . . .	53

Concentration, Competition, and Performance in the  
Mobile Telecommunications Services Market by  
Charles River Associates . . . . . Attachment A

## **SUMMARY**

GTE Service Corporation ("GTE") hereby comments on the Commission's Notice of Proposed Rulemaking and Notice of Inquiry ("NPRM/NOI") which tentatively concludes that Equal Access should be imposed on cellular providers and which seeks comment on Commercial Mobile Radio Service ("CMRS") interconnection issues and resale obligations.

## **EQUAL ACCESS**

The cellular industry has had competition between two licensees of spectrum from its commercial beginnings, and unlike the wireline telephone industry, has also been largely free of restrictive regulation. As a result, innovation in design of services and service areas has been a hallmark of the industry. The tentative conclusions and proposed rules reached by the Commission on Equal Access and Interconnection issues would, if imposed, act to stifle such innovation and would not provide the benefits suggested by the Commission in the NPRM/NOI.

Not only has the FCC insisted on two facilities-based cellular carriers from the inception of cellular telephony, the FCC has also required the facilities-based carriers to permit the resale of their services, creating additional competitors for the customer demanding the ease and mobility of cellular communications. The whole concept of cellular telephony, that of mobility, whether in an automobile or with a handheld telephone, has produced huge service areas

and the concept of instant access without regard to the service territory in which the customer is located. This is in stark contrast to the constraints of wireline service which typically involves a location to location call. The customer has not, until very recently, had a seamless way to retrieve calls directed to the customer's home or business location when the customer is traveling or physically away from either place.

Cellular telephony has, to date, been less restricted by regulation that dampens market forces. As a result, the cellular business has been characterized by competition for customers based on service and dollar value. Equal Access, and the strictures which such regulation would place on the cellular industry, would have a significant dampening effect on innovation in services, custom plans, and the creation of the seamless nationwide calling ability that has played such a large part in the success of cellular telephony with the consuming public.

The NPRM/NOI's tentative conclusion is based on the outdated record of the MCI Petition which failed to reflect the significant changes that have occurred in the wireless marketplace after the MCI Petition's record was created. Since that time the wireless environment has changed dramatically with the announced AT&T-McCaw merger, the emergence of wide-area SMR carriers such as Nextel

Communications, Inc. ("Nextel") and the narrowband PCS auction, and the upcoming broadband PCS auctions.

Contrary to the Commission's concerns which underlie the tentative conclusion:

- \* Cellular customers have the capability today, without Commission intervention, to select their IXC via 800 numbers and other alternative dialing plans, and may use speed dialing to do so.
- \* In the near future 75% of all cellular POPs will likely have 1+ Equal Access as an option.
- \* The alleged benefits of Equal Access cannot be fully realized.
- \* The costs of Equal Access significantly outweigh any benefits.

The implementation of Equal Access carries with it the potential to destroy or thwart the wide toll-free calling areas which were created and have grown in response to marketplace demand. The elimination of wide toll-free calling areas would increase cellular subscribers' bills as subscribers would then incur, for the first time, IXC charges for calls that were previously toll-free.

The very concept of Equal Access is outmoded and inapplicable to the cellular marketplace. The Commission's analysis, which excludes meaningful consideration of cellular's lack of bottleneck facilities, is unprecedented and fatally flawed. Further, as evidenced in the attached study by the Charles River Associates, Inc., it was determined that there is significant cellular competition today and that the emergence of PCS and wide-area SMR

carriers will further increase competition. The ability for cellular subscribers to select their IXCs today renders moot any concern that cellular carriers could preclude IXC selection.

The most compelling evidence that imposition of Equal Access is unnecessary is before the Commission. Since its inception, the cellular industry has had one segment tied to Equal Access and artificial boundaries, the RBOCs. If Equal Access were deemed beneficial by cellular customers, then RBOC cellular carriers would have dominated their markets to the detriment of others such as GTE. That has not happened.

The NPRM/NOI also requested comment concerning the imposition of Equal Access on other CMRS services such as air-to-ground ("ATG") service. GTE believes that Equal Access for ATG carriers is clearly inappropriate because it is: 1) unwarranted due to the vibrant competition between the three ATG carriers; and 2) technologically and economically infeasible.

#### **Interconnection and Resale**

The Commission's current interconnection policy, which requires good faith negotiation between LECs and cellular carriers, should be retained. Negotiated interconnection arrangements provide both LECs and cellular carriers with the flexibility necessary to rapidly respond to changing market conditions. The decision of whether one CMRS carrier will provide interconnection to another and the manner of

interconnection are decisions best left to marketplace forces. With the advent of PCS and wide-area SMR carriers, GTE predicts that the competition among carriers will be so fierce that those carriers that desire interconnection with other CMRS providers will, for economic reasons, interconnect as the market dictates.

The Commission's cellular resale policy should be applied to all CMRS carriers except ATG carriers. ATG service is a service for which resale is technically infeasible. In ATG, resale cannot be provided due to: 1) the lack of inter-operability of equipment; 2) ATG's narrow bandwidth; and 3) the requirement that all ATG carriers share spectrum on an "as available" basis. Further, resale need not be imposed on ATG carriers in order to enhance competition, as healthy competition already exists and there is always the prospect of new ATG entrants.

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**COMMENTS OF GTE SERVICE CORPORATION**

**I. Introduction**

GTE Service Corporation ("GTE") hereby submits its Comments on the NPRM/NOI on behalf of GTE's affiliated telephone and wireless communications companies. GTE is a leading provider of a wide variety of telecommunications services, including wireless services such as cellular, air-to-ground ("ATG"), and paging.

GTE objects to the tentative conclusion of the NPRM/NOI to impose an Equal Access requirement on all cellular carriers and opposes an Equal Access obligation for ATG providers. GTE favors preservation of the Commission's framework for contractual negotiation of LEC to CMRS interconnection arrangements. GTE believes that interconnection arrangements among CMRS providers should be governed by marketplace forces. GTE suggests that resale be provided by all CMRS carriers except ATG service providers.

## **EQUAL ACCESS**

### **II. The NPRM/NOI's Tentative Conclusion To Impose Equal Access Is Based on an Antiquated and Inadequate Record**

#### **A. The MCI Petition Comments Are Outdated and Fail to Fully Account for Significant New Competitors**

The NPRM/NOI's tentative conclusion is based largely on the comments on the MCI Petition requesting Equal Access. NPRM/NOI at 19, ¶ 35. The MCI Petition and responsive comments were filed over two years ago, at a time in which the wireless marketplace was far different from what it is today. In the last two years, large scale changes have occurred in the wireless marketplace. AT&T, the largest IXC, and McCaw, the largest cellular carrier, announced plans to merge. Wide-area SMR carriers such as Nextel have heralded their plans to provide cellular-like service and are currently constructing facilities for that purpose.

FCC initiatives have spurred the pace of change. Whereas in 1992 only a broad regulatory outline for PCS was in place,<sup>1</sup> today the Commission has 1) established a comprehensive regulatory framework for PCS; 2) conducted the initial narrowband PCS auction; and 3) stated that it intends to commence the broadband PCS auction process before the end of 1994. Thus, both regulatory and marketplace developments which have occurred in the two years since the

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<sup>1</sup> See Amendment of the Commission's Rules to Establish New Personal Communications Services, (Notice of Proposed Rule Making and Tentative Decision), 7 F.C.C. Rcd 5676 (1992).

MCI Petition have rendered the record developed in that proceeding stale.

The Commissioners perceived the shortcomings of the record and openly questioned the validity of the tentative conclusion. Commissioners Chong, Quello, and Barrett all noted the changes which have occurred in telecommunications since the MCI Petition was filed and voiced concern over the automatic application of Equal Access to cellular. For example, Commissioner Chong stated,

The record compiled to date on equal access issues in the CMRS context is inchoate. . . . I emphasize that today's tentative conclusion regarding equal access requirements for cellular licensees is just that--tentative. I believe it is important for the Commission carefully to consider the evolving nature of competition in commercial mobile radio services generally, prior to reaching any final decisions in this proceeding regarding equal access . . . issues with respect to any CMRS provider.

Separate Statement of Commissioner Rachelle B. Chong.

Commissioner Quello crystallized the distinction between regulation of the telco and wireless markets and stated his belief that "[W]e should be asking how a competitive market for mobile communications will allow us to remove regulatory impediments rather than grafting regulatory stop-gap measures upon a family of services yet to be developed and offered by competitors to the public."

Separate Statement of Commissioner James R. Quello.

Commissioner Barrett found that:

[T]he rationale for imposing equal access obligations in the context of "bottleneck

facility" market power is not apparent here. Nor does there appear to be a future trend toward consolidation of market power in the wireless area. In fact, given the greater level of competition that could occur, we may decide that there is no basis for imposing MFJ type of equal access obligations on multiple CMRS providers, including cellular.

Separate Statement of Commissioner Andrew C. Barrett.

**B. The MCI Petition and CMRS Proceeding Comments Are Not a Substitute for the Requisite Commission Finding Concerning Lack of Competition in Cellular Markets**

As will be discussed in Part VII infra, the imposition of Equal Access cannot withstand judicial scrutiny because no finding has been made that cellular carriers possess bottleneck facilities.<sup>2</sup> The record does not support such a finding, nor can it do so, because no cellular carrier has bottleneck facilities. To transmute the rationale for imposing Equal Access to a mere review of market power is unprecedented and indefensible. Assuming arguendo that cellular carriers' exercise of market power<sup>3</sup> was a sufficient basis upon which to institute Equal Access, a review of the record reveals that the Commission made no such finding in either the MCI Petition proceeding or the CMRS Second Report and Order. See Implementation of

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<sup>2</sup> The restrictions placed on the RBOCs in United States v. American Tele. and Tele. Co., et al., 552 F.Supp. 131, 195 (D.D.C. 1982), aff'd sub nom, Maryland v. United States, 460 U.S. 1001 (1983) [hereinafter "MFJ"] were squarely based on this ground.

<sup>3</sup> See NPRM/NOI at 18, n. 86 for the Department of Justice's definition of market power.

Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services (Second Report and Order), 9 F.C.C. Rcd 1411 (1994) [hereinafter CMRS Second Report and Order].

The MCI Petition did not progress beyond the comment stage, and thus the Commission did not make any findings concerning Equal Access in that proceeding. In the CMRS Second Report and Order, the Commission relegated a decision on Equal Access to the then extant MCI proceeding. CMRS Second Report and Order at 1499, ¶ 236. While the NPRM/NOI explicitly incorporated the MCI record into this proceeding, NPRM/NOI at 3, n.2, it is clear from the Commission's requests in the NPRM/NOI for additional information concerning the competitive nature of the cellular market that the Commission did not consider the MCI record sufficient. Id. at 21-22, ¶¶ 42, 43. The lack of a specific finding concerning cellular carriers' market power in either the MCI Petition proceeding or in the CMRS Second Report and Order, coupled with the outdated nature of the MCI Petition, demonstrate that the past record is insufficient to support the NPRM/NOI's tentative conclusion.

The record not only reveals that the Commission never found that cellular carriers exercise market power, but also discloses that the Commission made several findings which appear to refute the notion that cellular carriers exercise market power. In the CMRS Second Report and Order, the

Commission forbore from tariffing cellular carriers based in part upon the FCC's determination that competition exists in the cellular marketplace. CMRS Second Report and Order at 1478, ¶ 175. Further, the Commission found that the complex pricing structures that exist in the cellular industry create a barrier to collusive pricing, and it noted that rapid changes in the nature of the product and competition from existing and new services may also be restraints on collusion. Id. at 1470-71, ¶¶ 147-149.

GTE respectfully submits that the NPRM/NOI's tentative conclusion to require Equal Access is wholly inconsistent with the Commission's findings and conclusions in the CMRS Second Report and Order. One must ask how the cellular industry could simultaneously be competitive enough to warrant tariff forbearance and be comprised of carriers that exercise market power sufficient to warrant the imposition of Equal Access. Further, it would seem impossible for cellular carriers to exclude IXCs given the fact that cellular subscribers currently have the ability to select any IXC by dialing 800 and 950 numbers in non-RBOC cellular markets and by dialing 1+ in RBOC cellular markets. (See Part III infra.)

**III. Equal Access Need Not Be Imposed on Cellular Carriers Due to the Existence of Viable, Cost-Effective, and Technically Feasible Alternatives**

Equal Access need not be mandated by the Commission as it is already provided in the cellular marketplace.

Customers already have or may soon have the option of presubscribing to their IXC of choice through a cellular carrier that provides 1+ Equal Access. Located in each of the largest 42 markets are either an RBOC, Airtouch, or McCaw cellular carrier. The RBOC cellular carriers and Airtouch already provide Equal Access; McCaw will begin providing Equal Access after the completion of its anticipated merger with AT&T.<sup>4</sup> Viewed another way, nearly 75% of all cellular POPs may, if desired, soon be able to presubscribe to an IXC.<sup>5</sup> However, in GTE's experience, cellular customers have not demanded Equal Access. See Part VI, Section A, Subsection 1, infra.

**A. A Customer's Choice of IXC Can Currently Be Accessed with 800 and 950 Numbers**

The notion that subscribers are unable to select their IXC is without merit.<sup>6</sup> In all cellular systems without 1+ dialing, IXC choice and PSTN access can be provided now, through speed dialing telephones and the use of 800 and 950 numbers. Speed dialing was a competitive marketplace response that allows direct customer access to an IXC of choice that is as simple as 1+ dialing. Speed dialing is a

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<sup>4</sup> Proposed Final Judgment and Competitive Impact Statement, United States of America v. AT&T Corp. & McCaw Cellular Communications Inc., 59 F.R. 44158 (1994).

<sup>5</sup> Several RBOC cellular carriers market Equal Access as an additional capability they offer to their subscribers.

<sup>6</sup> Cellular carriers provide various means by which cellular subscribers can select IXCs, including utilization of 800 and 950 numbers, 10XXX codes, or presubscription.

standard feature on every cellular telephone sold by the industry's major suppliers. In GTE's experience, cellular subscribers are familiar with their cellular telephone speed dialing features. When the difficulty of providing 1+ Equal Access is compared to the simple alternative of 800 and 950 dialing plans, which already exist and are widely available, the exorbitant costs of implementing Equal Access are absurd. Surely, if consumers were to be given a choice between the two, they would prefer these currently accessible alternatives.

**B. 10XXX Is a Viable, Cost-Effective Method of Providing Customers with the Ability to Select Their IXC**

Another viable alternative to an Equal Access requirement is the utilization of 10XXX code dialing arrangements. Consumers are already accustomed to accessing AT&T and other IXCs via 10XXX codes, and this method adds only five digits to current landline telephone numbers. By utilizing the speed dial feature on a cellular telephone, a cellular subscriber can dial an IXC's 10XXX code as quickly as the number 1.

Speed dialing and a 10XXX dialing plan places the decision of whether to select a specific IXC squarely in the hands of the subscriber and thus accomplishes the goal of providing access to the customer's choice of IXC. It does so without incurring the significant detriments inherent in implementing Equal Access in a cellular environment--

increased capital expenditures, increased costs to the subscriber, and the potential dismemberment of wide toll-free calling areas.

The cost of utilizing 10XXX is nominal when compared to the implementation expense of 1+ Equal Access, which for GTE alone is estimated to be over \$23,000,000. This cost differential results from the fact that 10XXX codes do not require extensive special network facilities and software, presubscription and balloting costs, or changes to toll-free calling areas as does 1+ Equal Access. Thus, the adverse economic impact of Equal Access to the cellular subscriber could be eliminated by the substitution of 10XXX for Equal Access.

#### **IV. The Imposition of Equal Access on Cellular Carriers Will Seriously Disrupt the Industry and Adversely Affect Cellular Subscribers**

The imposition of Equal Access upon non-RBOC cellular carriers will seriously disrupt the cellular industry and adversely affect cellular subscribers. It will affect every aspect of cellular systems, from software, to hardware, to billing, to the type of service that is furnished. It will be costly--GTE estimates that the final bill for GTE alone will be at least \$23,000,000--and implementation will be time consuming, all to the ultimate detriment of the end user. Equal Access on a mandated basis without a finding of market power is a draconian measure. The fact that Equal Access was imposed on the RBOCs in a distinct environment

and in a different time in telecommunications history for a different purpose is not relevant to this proceeding.

**A. Equal Access will Cause Serious Disruptions to Cellular Service if Toll-Free Calling Areas Are Eliminated or Their Growth Retarded**

Since the inception of the cellular industry, cellular carriers' toll-free calling areas have evolved based on customer demand and mobility.<sup>7</sup> The suggestion that calling areas be reconfigured for Equal Access purposes is daunting, whether LATAs, MTAs, or any other service area is proffered.<sup>8</sup> By reconfiguring calling areas, the Commission would be substituting artificial market boundaries for wide toll-free calling areas which were formed in response to customer demand. Any decision that would disrupt the evolution and growth of these wide toll-free calling areas

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<sup>7</sup> It is important at this juncture to note that there is a difference between a cellular carrier's FCC defined "service area" and its "calling area." The service area is the area which the cellular carrier is licensed to serve, whereas the land-to-mobile and mobile-to-land calling areas often extend well beyond the service area, sometimes crossing LATA or even state boundaries. Calling areas are primarily determined by market forces, customer demand, communities of interest, and cellular carriers' interconnection agreements with LECs. In many instances, the cellular subscribers' toll-free calling areas are further extended by inter-operating agreements between adjacent cellular providers.

<sup>8</sup> The District Court's grant of waivers to RBOCs to allow some inter-LATA provision of mobile services was a recognition that cellular service should not be denied to consumers simply because of the artificially created LATA boundaries. See United States v. Western Electric Co., 578 F. Supp. 643, 647-48, 653 (D.D.C. 1983); United States v. Western Electric Co., et al., 1990-2 Trade Cas. (CCH) ¶ 69,177 at 64,452 (D.D.C. 1990).

would deprive cellular subscribers of a valuable service.<sup>9</sup> The Commission itself recognizes that the public interest could be impeded by the change in calling areas. NPRM/NOI at 31, ¶ 66.

Any change to toll-free calling areas would cause significant disruptions in cellular service and pose enormous costs. Customers would face significantly increased prices, particularly due to the end of wide-area toll-free calling plans. GTE therefore strenuously objects to any changes in wide-area toll-free calling in the name of Equal Access.

**B. If Wide-Area Toll-Free Calling Were to Be Reduced or Eradicated, There Would Be a Concomitant Loss in Savings to the Consumer.**

Wide-area, or expanded, toll-free cellular calling areas are fairly common throughout the nation, and provide enormous cost savings to consumers. With wide-area toll-free calling, end users are able to place calls over long distances without incurring any toll charge.

In Texas, GTE provides its cellular customers with toll-free calling over a 34,000 square-mile area. GTE cellular subscribers anywhere in this area are able to call Beaumont, Houston, Galveston, College Station, and Austin

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<sup>9</sup> The imposition of reconfigured calling areas would adversely affect the public and appear to benefit only IXC's, as they would receive traffic which had previously been carried over cellular systems' wide toll-free calling areas. Further, such an action would be anticompetitive as it would handicap cellular carriers' efforts to compete with new CMRS competitors which will have far larger licensed service areas.

toll-free. The direct benefits to the consumer are dramatically illustrated by the breadth of this toll-free calling area; whenever GTE subscribers utilize the Texas toll-free calling area, they are saving significant toll charges.

Competition and demand for mobility will drive the continued expansion of toll-free calling areas by creating new areas with expanded toll-free calling and by enlarging existing wide toll-free calling areas. If Equal Access were accompanied by a change in toll-free calling areas, their future growth would be extinguished, depriving cellular subscribers of even greater savings. Reconfiguration would also certainly eliminate all existing wide toll-free calling areas, and would therefore mean higher costs to every end user due to the additional toll charge. Customers who have grown accustomed to the steady decline in real prices for cellular service would not understand or tolerate such increases in price. Thus, any restriction of toll-free calling areas is clearly contrary to the public interest. As the Commission has tentatively stated in the NPRM/NOI, "the public interest would be disserved by such reconfiguration of calling areas." NPRM/NOI at 31, ¶ 66.

**V. The Perceived Benefits of Equal Access Cannot Be Completely Realized Because the Full Imposition of 1+ Equal Access Is Technically Infeasible**

In the NPRM/NOI, the FCC discusses Centel's arguments on the technical infeasibility of providing "Full" Equal Access in the cellular environment. NPRM/NOI at 33-34, ¶¶ 73-74. Full Equal Access in interstate calling would dictate that cellular carriers hand off their subscribers' calls to IXCs as soon as the subscriber crossed a state or calling area boundary.

GTE agrees with Centel that it is technically impossible to hand off a cellular subscriber's call to an IXC when that call originates in a home territory and then crosses a state boundary. It is equally impossible to perform such a feat when LATA boundaries are involved. Current intersystem connections are simply too slow to route a call to an IXC in this scenario without dropping the call. See id. at 33, ¶ 74. GTE notes that the RBOCs have received temporary waivers of the MFJ to provide inter-system handoff across LATA boundaries. These waivers were granted due to the technological barriers of handing off a call when a caller moves from one system into another. See, e.g., Western Electric, 1990-2 Trade Cas. (CCH) ¶ 69,177 at 64,452-53, 64,455 (D.D.C. 1990).<sup>10</sup> Further, given the

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<sup>10</sup> The District Court has thus far refused to lift the Equal Access requirement entirely from the RBOC cellular carriers. See Western Electric, 673 F. Supp. 525, 552 (D.D.C. 1987), aff'd in part, rev'd in part, 900 F.2d 238 (D.C. Cir), cert. denied sub nom, MCI Communications Corp. v. United States, 498 U.S. 911 (1990).

location of many metropolitan areas near or straddling state or LATA boundaries, there would be a significant number of calls on which 1+ Equal Access could not be provided.

Centel has also argued that Equal Access is only possible where a roamer initiates a call in a system using IS-41 technology.<sup>11</sup> GTE concurs, and emphasizes that for Equal Access purposes, IS-41 technology must exist not only in the roamer's home system, but also in the visited system. This further limits the universe of toll calls to which Equal Access could apply.

In addition, to the best of GTE's knowledge, IXC switches do not currently accept Automatic Number Identification ("ANI") from outside the area where the call originated. This limitation poses no problem with LEC interconnection, because wireline networks and subscribers are stationary. However, the cellular equivalent of the ANI, the Mobile Identification Number ("MIN"), bears no relationship to the location of call origination, and therefore, IXCs will reject any long-distance calls from cellular roamers. Many IXCs do not even serve certain regions of the country, rendering true nationwide Equal Access impossible.

As this discussion makes clear, there are numerous technical limitations on the ability of cellular carriers to

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<sup>11</sup> Comments of Centel Cellular Co. at 8-9, filed in Policies and Rules Pertaining to Equal Access Obligations of Cellular Licensees, RM-8012 (Sept. 2, 1992).

offer Equal Access. To the extent that Equal Access cannot be fully realized in a cellular environment, neither can the "benefits" of Equal Access be fully realized. An analysis of the benefits and costs of Equal Access is undertaken and discussed in Part VI infra.

**VI. The Benefits of Implementing Equal Access Are Far Outweighed by the Costs**

**A. The Benefits of Equal Access Are Illusory or Can Be Realized without the Imposition of Equal Access**

Promoters of Equal Access believe that the benefits of Equal Access include: a) increased customer choice; b) lower rates for IXC service; and c) the introduction of technological innovations. Each of these will be discussed below, and it will be demonstrated that these benefits are either currently available or will become available without mandated Equal Access.

**1. Cellular subscribers' Equal Access needs are currently met.**

More than 90% of GTE's mobile originated cellular traffic is toll-free, and less than 10% is handed off to an IXC. Thus, the vast majority of GTE's mobile originated traffic would not be subject to Equal Access. Based on discussions with GTE cellular customer service managers and a review of customer complaints, GTE finds that cellular customers have not demanded Equal Access. GTE believes that customers have not demanded Equal Access for two reasons: 1) currently subscribers can select their IXC by utilizing 800